

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

IN THE MARION COUNTY \_\_\_\_\_ COURT

CAUSE NO. 480040702PL004337

STATE OF INDIANA, )

Plaintiff, )

v. )

MARK GRACE, )  
individually and doing business as, )  
Mark Motors, )

Defendant. )

**FILED**  
79 FEB 01 2007  
*Elizabeth A. White*  
CLERK OF THE MARION CIRCUIT COURT

**COMPLAINT FOR INJUNCTION**  
**CONSUMER RESTITUTION, COSTS, AND CIVIL PENALTIES**

The State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Mary Ann Wehmueller, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code §24-5-0.5-1 *et seq.*, for injunctive relief, consumer restitution, investigative costs, civil penalties, and other relief.

**PARTIES**

1. The Plaintiff, State of Indiana is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code §24-5-0.5-4(c).
2. The Defendant, Mark Grace, individually and doing business as Mark Motors, is an individual, who at all times relevant to this complaint, regularly engaged in the retail sale of used motor vehicles, with a principal place of business in Marion County located at 3030 South Madison Avenue, Indianapolis, Indiana 46227.

## FACTS

3. At least since March 2005, the Defendant has engaged in the retail sale of used motor vehicles to consumers.

4. On May 26, 2005, the Indiana Attorney General's Consumer Protection Division issued a title non-delivery warning letter to the Defendant, informing him of his duty to comply with Indiana's motor vehicle title delivery statute when engaging in vehicle sales. The warning letter is attached hereto and incorporated by reference as State's Exhibit "A".

5. On or about June 6, 2005 Melissa Thompson (hereinafter "Thompson") purchased a 1997 Ford Contour, vehicle identification number [REDACTED] (hereinafter "Contour"), from the Defendant for a total purchase price of \$2,968.00

6. Defendant failed to deliver the Contour's title to Thompson at the time of sale or delivery.

7. On June 6, 2005, the Defendant's employee, Jason Grace, provided Thompson with a "21-day affidavit" as permitted by Ind. Code §9-17-3-3.1, in which he represented he Mark Motors would deliver the Contour title to Thompson on or before June 27, 2005.

8. To date, Defendant Grace has failed to provide Ms. Thompson with the Contour's title.

9. On or about December 5, 2005 Juan Rojas (hereinafter "Rojas") purchased a 1996 Mitsubishi Eclipse, vehicle identification number, [REDACTED] (hereinafter "Mitsubishi"), from the Defendant for a total purchase price of \$3,694.70.

10. Defendant failed to deliver the Mitsubishi title to Rojas at the time of sale or delivery.

11. On December 5, 2005, an employee of the Defendant gave Mr. Rojas a "21-day affidavit" as permitted by Ind. Code §9-17-3-3.1, in which he represented that Mark Motors would deliver the Mitsubishi title to Rojas on or before December 26, 2005.

12. To date, Defendant Grace has failed to deliver the Mitsubishi title to Mr. Rojas.

13. On or about December 10, 2005 Linda Hurd (hereinafter "Hurd"), purchased a 1995 Ford Taurus, vehicle identification number, [REDACTED] (hereinafter "Taurus"), from the Defendant for a total purchase price of \$1,128.94.

14. Defendant failed to deliver the Taurus title to Hurd at the time of sale or delivery.

15. On December 10, 2005, an employee of the Defendant gave Ms. Hurd a "21-day affidavit" as permitted by Ind. Code §9-17-3-3.1, in which he represented Mark Motors would deliver the Taurus title to Hurd on or before December 31, 2005.

16. To date, Defendant Grace has failed to deliver the Taurus title to Ms. Hurd.

17. On or about January 6, 2006 Charlotte Harp (hereinafter "Harp"), purchased a 1995 Chevrolet Cavalier, vehicle identification number [REDACTED] (hereinafter "Chevrolet"), from the Defendant for a total purchase price of \$3,273.16.

18. Defendant failed to deliver the Chevrolet title to Harp at the time of sale or delivery.

19. On January 6, 2006, Dawn R. Fair, an employee of the Defendant, gave Ms. Harp a "21-day affidavit" as permitted by Ind. Code §9-17-3-3.1, on which she represented that Mark Motors would make reasonable commercial efforts to produce a valid certificate of title for Ms. Harp.

20. Dawn R. Fair failed to fully complete Harp's "21-day affidavit" and did not identify a date on which Mark Motors would deliver title to Harp.

21. To date, the Defendant has failed to deliver the Chevrolet title to Ms. Harp.

**COUNT I - VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT**

22. The transactions identified in paragraphs 5, 9, 13, and 17 are "consumer transactions" as defined by Ind. Code §24-5-0.5-2(1).

23. The Defendant, Mark Grace, is a "supplier" as defined in Ind. Code §24-5-0.5-2(3).

24. The representations made by Defendant and/or his employees to consumers Thompson, Rojas, Hurd and Harp, violate the Indiana Deceptive Consumer Sales Act as follows:

(a) the Defendant and/or his agents misrepresented warranty of title in violation of Ind. Code §24-5-0.5-3(a)(8);

(b) the Defendant and/or his agents misrepresented that the Defendant would deliver the consumers' titles within a stated or reasonable period of time from the date of purchase in violation of Ind. Code §24-5-0.5-3(a)(10).

25. On the dates of sale, the Defendant knew or should have known that he could not deliver the consumers' titles as represented.

**COUNT II  
VIOLATIONS OF TITLE DELIVERY STATUTE**

26. Plaintiff realleges paragraphs 1 through 25.

27. The Defendant's failure to deliver titles to consumers Thompson, Rojas, Hurd and Harp, violates Ind. Code §9-17-3-3.

**COUNT III  
INCURABLE DECEPTIVE ACTS**

28. Plaintiff realleges paragraphs 1 through 27.

29. The Defendant intentionally sold the consumers vehicles, knowing he could not deliver titles as represented.

30. The Defendant's representations as referenced above constitute incurable deceptive acts and are actionable by the Attorney General pursuant to Ind. Code §24-5-0.5-1 *et seq.*

### **IRREPARABLE INJURY**

31. The misrepresentations set forth above will continue and will cause irreparable injury unless the Defendant Mark Grace is enjoined from engaging in further conduct in violation of Ind. Code §24-5-0.5-1 *et seq.*

### **RELIEF**

**WHEREFORE**, Plaintiff, State of Indiana, requests that the Court enter judgment against the Defendant Mark Grace as follows:

a. A permanent injunction pursuant to Ind. Code §24-5-0.5-4(c)(1), enjoining the Defendant, his agents, representatives, employees, successors, and assigns, from:

(1) selling motor vehicles without delivering vehicle titles as required by Ind. Code §9-17-3-3;

(2) misrepresenting warranty of title in violation of Ind. Code §24-5-0.5-3(a)(8); and,

(3) misrepresenting his ability to deliver vehicle titles within a stated or reasonable period of time in violation of Ind. Code §24-5-0.5-3(a)(10).

b. Consumer restitution pursuant to Ind. Code §24-5-0.5-4(c)(2), in the form of a Court Order directing the Indiana Bureau of Motor Vehicles to issue titles for the vehicles identified in paragraphs 5, 9, 13, and 17, to the specified consumers and/or their lienholders;

- c. Costs pursuant to Ind. Code §24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- d. On Count I of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-4(g), for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of \$500.00 per violation specific to the Thompson transaction and in the amount of \$5,000.00 per violation specific to the Rojas, Hurd, and Harp transactions, payable to the State of Indiana;
- e. On Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-8, for the Defendant's intentional violations of the Deceptive Consumer Sales Act, in the amount of \$500.00 per violation, payable to the State of Indiana; and
- f. All other proper relief.

Respectfully submitted,

STEVE CARTER  
Indiana Attorney General  
Atty. No. 4150-64

By:



Mary Ann Wehmuller  
Deputy Attorney General  
Atty. No. 15251-49A

Office of Attorney General  
Consumer Protection Division  
Indiana Government Center South  
302 W. Washington, 5<sup>th</sup> Floor  
Indianapolis, IN 46204  
Maw:301965

**STATE OF INDIANA  
ATTORNEY GENERAL  
STEVE CARTER**

May 26, 2005

Mark Motors  
Attn: Mark Grace  
3030 S. Madison Avenue  
Indianapolis, IN 46227

**RE: File No. 05-CP-50685  
Patrick A. Lipps complaint  
WARNING LETTER**

Dear Mr. Grace:

I have reviewed the above-referenced file regarding Patrick A. Lipps's complaint against Mark Motors. Mr. Lipps purchased a 1994 Chrysler Concorde LXI, , from you on November 17, 2004. Mark Motors did not deliver the title to Mr. Lipps until on or around March 4, 2005.

From a review of these facts, it appears that Mark Motors violated Indiana's title delivery statute, Indiana Code §9-17-3-3. As you know, the statute requires a dealer to deliver the certificate of title to the purchaser at the time of the sale or delivery, provided the purchaser has made all agreed upon initial payments for the vehicle, including delivery of a trade-in vehicle without hidden or undisclosed statutory liens. If a dealer cannot deliver title to a purchaser on the date of sale or delivery, certificate of title can be conveyed within 21 days after the date of sale if all of the following conditions exist:

- (A) The seller is a licensed vehicle dealer by the state.
- (B) The dealer is not able to deliver the certificate of title at the time of sale or transfer.
- (C) The dealer reasonably believes that it will be able to deliver the certificate of title, without a lien or an encumbrance on the title, within the twenty-one (21) day period.
- (D) The dealer provides the purchaser with a 21-day affidavit, as prescribed by Ind. Code §9-17-3-3.1 of this chapter.



**DIVISION OF CONSUMER PROTECTION**  
INDIANA GOVERNMENT CENTER SOUTH, FIFTH FLOOR  
302 WEST WASHINGTON STREET • INDIANAPOLIS, IN 46204-2770  
TELEPHONE (317) 232-6330 • (800) 382-5516



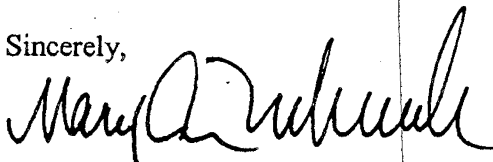
Mark Motors  
May 26, 2005  
PAGE TWO

(E) The purchaser has made all agreed upon initial payments for the vehicle, including delivery of a trade-in vehicle without hidden or undisclosed statutory liens.

Failure to deliver a vehicle title as required by Ind. Code §9-17-3-3 violates the Deceptive Consumer Sales Act, Ind. Code §24-5-0.5-1 *et seq.* Pursuant to Ind. Code §25-5-0.5-4(c), the Attorney General may bring an action to enjoin a deceptive act and can seek a judgment for consumer restitution, investigative costs and civil penalties of up to \$1,000.00 per violation. Additionally, the Attorney General may seek a civil penalty of not less than \$50.00 and no more than \$1,000.00 for each day of violation AND for each act of violation, as determined by the court. In lieu of litigation, the Attorney General may seek an Assurance of Voluntary Compliance, in which the dealer agrees to comply with all relevant statutes and regulations in all future consumer transactions, in addition to paying restitution and investigative costs.

If the Attorney General's Office receives any additional complaints against you involving these issues, the matter will be referred to our litigation staff for appropriate enforcement action.

Sincerely,



Mary Ann Wehmüller  
Deputy Attorney General

Maw:220950